



Federal Communications Commission  
Washington, D.C. 20554

May 4, 2010

**DA 10-723**

**Released: May 4, 2010**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Sage Broadcasting Corporation  
406 South Irving  
San Angelo, Texas 76903

KIDU-LP, Brownwood, Texas  
Facility ID No. 58559  
NAL Acct. No. 0841420045

KIDT-LP, Stamford, Texas  
Facility ID No. 58568  
NAL Acct. No. 0841420041

KIDZ-LP, Abilene, Texas  
Facility ID No. 58561  
NAL Acct. No. 0841420042

KIDV-LP, Albany, Texas  
Facility ID No. 58571  
NAL Acct. No. 0841420040

Dear Licensee:

The Chief, Video Division, has before her four Statements filed by Sage Broadcasting Corporation ("Licensee"), licensee of Stations KIDV-LP, Albany, KIDU-LP, Brownwood, KIDT-LP, Stamford, and KIDZ-LP, Abilene, Texas ("Stations"). Also before her are the July 24, 2008 Supplement to the Statements ("July 24th Supplement"), and the January 28, 2010 Supplement to the Statements ("January 28th Supplement") filed by the Licensee. The Statements and Supplements seek reduction or cancellation of four Notices of Apparent Liability for a Forfeiture (collectively "NALs")<sup>1</sup>, each in the amount of twenty thousand dollars (\$20,000) for violations of Sections 73.3526(e)(11)(iii) and 73.670 of the Commission's Rules ("Rules").<sup>2</sup> The violations involve Licensee's failure to file with the Commission, place in the Stations' public inspection files, and publicize the existence and location of the Children's Television Programming Reports. The NALs also found that Licensee failed to comply with the limits on commercial matter in children's programming. By this action, we cancel the NALs and admonish Licensee for violating Sections 73.3526(e)(11)(iii) and 73.670 of the Rules.

<sup>1</sup> *Sage Broadcasting Corporation (KIDV-LP)*, 23 FCC Rcd 7375 (MB 2008) ("*KIDV-LP*"); *Sage Broadcasting Corporation (KIDT-LP)*, 23 FCC Rcd 8170 (MB 2008) ("*KIDT-LP*"); *Sage Broadcasting Corporation (KIDZ-LP)*, 23 FCC Rcd 8165 (MB 2008) ("*KIDZ-LP*"); and *Sage Broadcasting Corporation (KIDU-LP)*, 23 FCC Rcd 8160 (MB 2008) ("*KIDU-LP*").

<sup>2</sup> 47 C.F.R. §§ 73.3526(e)(11)(iii) and 73.670.

*Background.* On March 31, 2006, Licensee filed applications to renew the licenses of the above-referenced Stations. In Exhibit 20 and in March 12, 2008 amendments to the renewal applications, Licensee disclosed that it failed to prepare, file with the Commission, and place in its public inspection files Children's Television Programming Reports for Stations KIDU-LP, KIDV-LP, KIDT-LP, and KIDZ-LP from 2002 through 2005. Licensee indicated that through misunderstanding by a Station employee, it filed Children's Television Programming Reports only for co-owned Class A television station KIDB-CA, Sweetwater, Texas. In Exhibit 1 and in April 11, 2008 amendments to the renewal applications, Licensee also reported that it failed to publicize the existence and location of Children's Television Programming Reports for Station KIDU-LP, KIDV-LP, KIDT-LP, and KIDZ-LP.

In Exhibit 19 to the renewal applications, Licensee indicated that Stations KIDU-LP, KIDV-LP, KIDT-LP, and KIDZ-LP exceeded the children's television commercial limits on five occasions during the license term. Of those five overages, two were 30 seconds in duration, one was two minutes in duration, one was four minutes in duration, and one was four minutes and thirty seconds in duration.

The Bureau issued four NALs to Licensee in the amount of twenty thousand dollars each for violating Sections 73.3526(e)(11)(iii) and 73.670 of the Rules.<sup>3</sup> Licensee filed its Statements requesting reduction or cancellation of the forfeitures on June 5, 2008 and June 19, 2008. In its Statements, Licensee argued that with respect to its failure to file Children's Television Programming Reports for the Stations, mitigation for its violation is warranted since it broadcast identical children's programming on each of the Stations. Moreover, contended Licensee, all of the Stations got their programming from one "mother" station, and Station KIDB-CA filed a report. Since KIDB-CA filed a report, opined Licensee, its viewers therefore should have been aware that the children's programming reflected in Station KIDB-CA's report was available on all of the other Stations as well. Licensee also asserted that its failure to file reports was caused by employee error, and that this is a plausible explanation that warrants mitigation.

With respect to Licensee's failure to publicize the existence and location of Children's Television Programming Reports, Licensee acknowledges that it failed to publicize reports for Stations KIDU-LP, KIDV-LP, KIDT-LP, and KIDZ-LP. However, Licensee argues that it publicized the existence and location of the reports that demonstrated the children's programming on all five stations in spots aired on all five stations. Licensee indicated that under these circumstances, mitigation is warranted for its failure to publicize reports for all of its Stations.

Regarding Licensee's failure to comply with the children's television commercial limits, Licensee stated that these overages occurred over two days in an eight-year license term and that the overages did not include a program-length commercial or host-selling violation. Licensee also reported that the spots that comprised the overages earned Licensee a total of \$20.47, of which 0.47 was cash consideration, and asserted that this demonstrates that there was no motive to violate the children's television commercial limits. Licensee also argued that in other cases involving commercial overages, Commission precedent is to admonish or take no action against the licensee.

Licensee asserted that reduction of the forfeiture amount is warranted in light of its overall compliance with the Rules. Licensee also indicated that it is financially unable to pay the proposed forfeiture. Under these circumstances, contended Licensee, reduction or cancellation of the forfeiture amount is warranted.

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<sup>3</sup> *KIDV-LP*, 23 FCC Rcd at 7375; *KIDZ-LP*, 23 FCC Rcd at 8165; *KIDT-LP*, 23 FCC Rcd at 8170; *KIDU-LP*, 23 FCC Rcd at 8160.

*Discussion.* The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the Commission's *Forfeiture Policy Statement*.<sup>6</sup> In assessing forfeiture, Section 503(b)(2)(D) of the Act requires that we take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup>

Licensee does not dispute that it failed to file Children's Television Programming Reports for the Stations, but states that, due to its circumstances, it is entitled to mitigation for this failure. We disagree that mitigation is warranted for Licensee's failure to file and to publicize Children's Television Programming Reports for the Stations. Licensee failed to file Children's Television Programming Reports from 2002 through 2005. Moreover, Licensee was apparently unaware of its omission until it filed its license renewal application. As a result, numerous Children's Television Programming Reports were missing from the Stations' public inspection file for the majority of the license term. Further, human error or inadvertence is not a mitigating circumstance.<sup>8</sup> The Commission has long held that "licensees are responsible for the acts and omission of their employees and independent contractors,"<sup>9</sup> and has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."<sup>10</sup> Moreover, we do not believe that Licensee's efforts to publicize reports that it claims reflected children's programming aired on KIDB-CA mitigates its failure to publicize the reports for KIDU-LP, KIDV-LP, KIDT-LP, and KIDZ-LP.

Licensee argued that the forfeiture proposed for the commercial overages should be reduced in this case since they occurred only over two days in an eight year license term, none of the overages involved a program-length commercial or an instance of host-selling, and the spots constituting the overages earned Licensee a total of \$20.47. However, there is no dispute that of the five commercial overages reported by Licensee, two of the overages were at least four minutes in duration. Further, although Licensee asserted that overages occurred over a two-day period, we note that each of the Stations exceeded the children's television commercial limits by a total of eleven minutes and thirty

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 180 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> See *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations"); *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error).

<sup>9</sup> *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) ("*Eure*"); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972).

<sup>10</sup> See *Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

seconds, during this time period. Therefore, we do not believe that a reduction in the forfeiture amount assessed for Licensee's violation of the children's television commercial limits is warranted.

Licensee also asserted it is financially unable to pay the proposed forfeiture.<sup>11</sup> The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the party against which the forfeiture is proposed submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles ("GAAP"); or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.<sup>12</sup>

In general a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>13</sup> The Commission has found that the staff's use of gross revenues is a reasonable and useful yardstick to analyze a company's financial condition for forfeiture purposes.<sup>14</sup> In support of its request for cancellation or reduction of the forfeiture, Licensee submitted copies of its 2006, 2007, and 2008 federal income tax returns.<sup>15</sup>

We have examined Licensee's response to the NAL pursuant to the statutory factors above, and in conjunction with the *Policy Statement*. As a result of our review, we conclude that Licensee willfully and repeatedly violated Sections 73.3526(e)(11)(iii) and 73.670 of the Rules. However, after reviewing Licensee's claim and the supporting documentation, we believe that payment of the forfeiture, or any reduction thereof consistent with Commission precedent,<sup>16</sup> would pose a financial hardship in view of Licensee's documented gross income. Accordingly, we cancel the proposed forfeiture. Nevertheless, we find that it is appropriate to admonish Licensee for its willful and repeated violation of Sections 73.3526(e)(11)(iii) and 73.670 of the Rules.

*Conclusion.* In view of the foregoing, the Notices of Apparent Liability (NAL/Acct. Nos. 0841420045, 0841420041, 0841420042, and 0841420040) for violation of Sections 73.3526(e)(11)(iii) and 73.670 are HEREBY CANCELLED. Sage Broadcasting Corporation is instead hereby

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<sup>11</sup> Licensee further claimed that cancellation of the forfeiture is warranted because of its history of compliance with the Rules. However, because we cancel the forfeiture on other grounds, we need not address the merits of this argument.

<sup>12</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (2004).

<sup>13</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) ("*PJB Communications*").

<sup>14</sup> *Id.*

<sup>15</sup> Licensee has asked for confidential treatment of the tax returns pursuant to 47 C.F.R. § 0.459.

<sup>16</sup> *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 6741 (CCB 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

ADMONISHED for its willful and repeated violations of Sections 73.3526(e)(11)(iii) and 73.670 of the Rules.

Sincerely,

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc: Howard M. Weiss, Esquire